

OPERATING LEASE AND MAINTENANCE AGREEMENT
BETWEEN
LAKE COUNTY, FLORIDA
AND RING POWER CORPORATION
FOR WHEEL LOADERS
RFP 08-0819

THIS OPERATING LEASE AND MAINTENANCE AGREEMENT is made by and between Lake County, Florida, a political subdivision of the State of Florida, hereinafter the "County", and Ring Power Corporation., a Florida corporation, its successors and assigns, hereafter "Lessor".

WHEREAS, the County has publicly issued a Request for Proposal, RFP 08-0819, in accordance with the Lake County Purchasing Policies and Procedures for firms qualified to provide wheel loaders for the Lake County Public Works Department; and

WHEREAS, the Lessor desires to provide and maintain such equipment subject to the terms of this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, understandings, conditions, premises, covenants and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and incorporated herein by reference.

2. **Lease Term.** The Lease term for each unit identified in the Equipment and Payment Schedule attached hereto and incorporated herein by reference as **Exhibit A**, shall commence on its "Delivery Date", which is the date the County takes possession of the last of the four units, and shall continue for a period of thirty six (36) months, unless otherwise terminated. All parties agree that title to the units shall at all times remain with the Lessor.

3. **Payments.** During the lease term, the County shall make all lease payments on a timely basis, including lease payments that are required to be made in the renewal term, if any. See the Equipment and Payment schedule attached hereto as **Exhibit A**. The County shall not be entitled to cancel or terminate this Lease except as expressly provided herein. Any lease payment received from the County shall be applied to this Lease. Payments shall be made in accordance with the Florida Prompt Payment Act, Chapter 218, Part VII, Florida Statutes.

4. **Assignment.**

A. No assignment of the payments under this Lease, nor assignment of any right or obligation hereunder may be made by the County or by the Lessor without the prior written consent of the other. In the event that the Lessor assigns this Lease with permission of the County, the assignee shall agree in writing to

assume all obligations contained within this Lease, including all maintenance responsibilities described herein upon failure of the Lessor to fulfill such maintenance obligations. Failure of assignee to assume all responsibilities hereunder shall void the assignment. Lessor shall remain liable for its performance under this Lease regardless of any assignment. The County shall have the right to review the assignment and shall be provided a copy of any associated documents perfecting the assignment.

B. Assignments shall be in the form and manner set forth in **Exhibit B**, attached hereto and incorporated herein by reference. The County shall not make any payments to assignee, until such time as a copy of the fully executed Assignment is delivered to the County.

5. **Service and Use of Equipment.** Lessor shall provide, at no cost to the County, operator training to County sufficient to ensure efficient operation of the Equipment and shall provide at least two (2) copies of service, parts and operator's manual to County. County shall only be responsible for daily fueling, checking of fluid levels and adding fluid if necessary, and/or greasing of fittings if required. Otherwise, all service, maintenance and repairs shall be the responsibility of the Lessor and shall be conducted in accordance with the following:

A. **Operational Condition.** Units shall be well maintained in top operating condition with 100% of all parts, components, and systems operational. All pin, hitches and moving parts shall be tight and within manufacturers standards or tolerances. Engines, transmissions, drive axles, and hydraulic systems shall be in peak operational condition at all times absent of leaks, blowby, reduced hydraulic pressures or driveline noise.

B. **Downtime.** Should the Lessor fail to complete the required service, maintenance, or repairs and return the equipment to duty, or should the Lessor fail to supply the necessary parts or labor to effect the repair within forty-eight (48) continuous hours, including holidays, Saturdays and Sundays, from telephonic notification, followed by written confirmation, by the County to the Lessor, a delay charge equal to eight hundred dollars (\$800.00) per calendar day, per unit shall be deducted from any leasing charge or maintenance fee schedules. Lessor shall be given the option of furnishing like equipment in lieu of the delay charge. Delay charges shall not be charged when the delay is a result of a natural disaster.

C. **Transportation.** All transportation for service, maintenance and repair shall be the responsibility of the Lessor.

Lessor shall be entitled to inspect the Equipment during regular business hours at County's place of business. County shall not install any accessory or device on the Equipment, except for such as may be removed without affecting the originally intended function or use of the Equipment. The County shall be entitled to unlimited usage of the Equipment during the Lease Term.

6. Scope of Service, Maintenance and Repair.

A. General. The Lessor shall be responsible for all service, maintenance and repair, both scheduled and unscheduled during the Lease Term in accordance with the following:

1) This agreement includes all parts, filters, oils, and other fluids (excluding top-off lubricants and fuel), delivery freight charges, labor travel time and/or mileage charges to complete recommended preventive maintenance, oil sampling at 250 hours, and to complete any repairs not covered by warranty during the contract term.

2) Special arrangements may be made to complete repair work on Saturdays, Sundays, or holidays if the County grants permission to access the machine during those days. Lessor must approve all requests for overtime labor before work begins.

3) Lessor shall furnish all tools and equipment necessary for normal field adjustment of the equipment.

4) Parts orders received by Lessor Monday through Friday, 7:30 am to 1:30 pm, will be shipped the same day. Parts required for warranty repair are shipped for delivery the next business day, excluding Saturdays, Sundays, and holidays.

5) Lessor will assume that cosmetic damage is normal wear and tear, and since all maintenance and repair is the responsibility of the Lessor, no claim for damages based upon abnormal wear and tear shall be made. Cosmetic damage shall include minor scratches or dents, but shall not include the following specifically limited items: (1) large dents covering 25% or more of the individual parts surface area in the sheet metal; (2) guards; (3) broken glass; or (4) broken lights so long as such things are not caused by the negligence of the Lessor. The following shall also apply:

- a. Lessor must provide immediate inspection at the time the Equipment is returned to Lessor by Lessee, or else Lessor waives any claims it may have regarding damage to the Equipment.
- b. Lessor must provide an estimate to repair the non-cosmetic damage to the Lessee.
- c. Lessee has the right to fix the non-cosmetic damage within a reasonable amount of time if Lessor's repair estimate is deemed unacceptable by the Lessee.

B. Repair Requests.

- 1) All requests for scheduled service or repairs will be directed to the Lessor.
- 2) Requests for PM service must be requested a minimum of one week prior to the next scheduled interval and will be completed during normal business hours.
- 3) If repairs are required, the Lessor will arrange on-site service response and will notify County immediately if the equipment is inoperable.

7. County's Responsibilities.

- A. Lake County will be responsible for the daily fueling, checking of fluid levels (adding if necessary), and/or greasing of fittings (if required).
- B. Lake County will be responsible for completing mandatory daily and weekly maintenance and inspection requirements as outlined in the Lessor's service manual and the engine manufacturer's maintenance schedule.
- C. Lake County is required to report any failure of the wheel loader's hour meter.

7. Return of Equipment. With respect to each unit, upon termination of this Lease, or any renewal thereof, the County shall return the equipment, at the County's expense, to Lessor at the following location: Ring Power, 9901 Ringhaver Drive, Orlando, Florida 32824

8. Disclaimer. County agrees that the Equipment has been selected by the County; the Equipment has been inspected by the County and County is satisfied that the Equipment is suitable for its purpose; Lessor is not the manufacturer of Equipment; and Lessor has not made any express warranties regarding this Equipment.

9. Insurance. County shall maintain public liability insurance on the Equipment with a minimum liability limits in the amount of \$1,000,000.00 per occurrence for bodily injury, including death, and in the minimum amount of \$250,000.00 per occurrence for property damage. County shall deliver to the Lessor, upon request, certificates or other evidence satisfactory to Lessor that insurance is maintained as required under this Lease. Lessor shall provide and maintain during the entire term of this Agreement insurance in the following types and limits with a company or companies authorized to do business in the State of Florida and which are acceptable to the County. Lessor shall not commence work under the Agreement until the County has received an acceptable certificate or certificates of insurance evidencing the required insurance, which is as follows:

- (X) General Liability insurance on forms no more restrictive than the latest edition of the Commercial General Liability policy (CG 00 01) of the Insurance Services Office or

equivalent without restrictive endorsements, with the following minimum limits and coverage:

- (X) General Liability
 - (X) Each Occurrence/General Aggregate \$1,000,000
 - (X) Products-Completed Operations \$500,000
 - (X) Personal & Adv. Injury \$500,000
 - (X) Fire Damage \$50,000
 - (X) Medical Expense \$5,000
 - (X) Contractual Liability

- (X) Automobile liability insurance, including owned, non-owned and hired autos with the following minimum limits and coverage:

Combined Single Limit	\$300,000
or	
Bodily Injury (per person)	\$100,000
Bodily Injury (per accident)	\$300,000
Property Damage	\$100,000

- (X) **Lake County, A Political Subdivision Of The State Of Florida, And The Board Of County Commissioners**, shall be name as additional insured as their interest may appear all applicable liability insurance policies.
- (X) Workers' compensation insurance in accordance with Florida Statute, Chapter 440, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc).
- (X) Certificates of insurance shall provide for a minimum of sixty (60) days prior written notice to the County of any change, cancellation, or nonrenewal of the required insurance.
- (X) Certificates of insurance shall identify the RFP number in the Description of Operations section of the Certificate.
- (X) Lessor shall be responsible for subcontractors and their insurance. Subcontractors are to provide certificates of insurance to the County evidencing coverage and terms in accordance with the Lessor's requirements.
- (X) The Certificate holder shall be: LAKE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AND THE BOARD OF COUNTY COMMISSIONERS, P.O. BOX 7800, TAVARES, FL 32778-7800

All deductibles or self-insurance shall appear on the certificates and shall be subject to approval by the County. At the option of the County, the insurer shall reduce or eliminate such deductibles or self-insured retentions, or the lessor and/or subcontractor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

The County shall be exempt from, and in no way liable for, any sums of money which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the lessor and/or subcontractor providing such insurance.

Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the contract for default.

Neither approval by the County of any insurance supplied by the vendor or subcontractor, nor a failure to disapprove that insurance, shall relieve the lessor or subcontractor of full responsibility for liability, damages, and accidents as set forth herein.

10. Loss or Damage.

A. All risk of loss or damage to the Equipment shall be the responsibility of the County, with exception of loss or damage resulting from the failure of Lessor to maintain the Equipment in accordance with this Lease. If any unit becomes stolen, destroyed or irreparably damaged from any cause other than from acts of the Lessor during the Lease Term, County shall give Lessor prompt notice thereof. County shall, in its sole discretion, elect to use the proceeds from any insurance claim to be applied to the repair of the Equipment or to payment of any obligation hereunder.

B. The County shall be responsible for injury or death of any person, to the extent permitted by section 768.28, Florida Statutes that arises out of County's possession, use, operation or storage of the Equipment.

11. Fees and Property Taxes. Unless otherwise provided herein, the County shall not be responsible for any taxes and fees.

12. Event of Default. A party shall be in default of this Lease by failing to perform or observe any covenant or condition contained herein that such party is required to perform and where such failure continues for a period of ten (10) days after written notice thereof is sent to the defaulting party by the non-defaulting party.

13. Remedies. Upon default by either party under this Lease, the non-defaulting party may avail itself of any remedy available pursuant to Florida law, including terminating the remainder of this Lease agreement.

14. Termination. This Agreement may be terminated by the County upon thirty (30) days advance written notice to the other party.

A. Termination for Cause. Termination by County for cause, default, or negligence on the part of Lessor shall be excluded from the foregoing provision.

Termination costs, if any, shall not apply. The 30-day advance notice requirement is waived in the event of termination for cause.

B. **Non-appropriation of Funds.** If funds are not budgeted and appropriated in any fiscal year for payments hereunder for the then current or succeeding fiscal year, this Lease shall impose no obligation on the County as to such current or succeeding fiscal year and shall become null and void except as to the lease payments herein agreed upon for which funds shall have been appropriated and budgeted, and no right of action or damage shall accrue to the benefit of Lessor, its successors and assigns. If the provisions of this section are used by the County, the County agrees to notify Lessor, or its assigns, immediately if funds are not budgeted and to surrender peaceably possession of the equipment to Lessor or its assignee.

15. **Notices.** Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be in writing and shall be deemed to have been duly given, served and delivered, if delivered by hand or mailed by United States registered or certified mail or sent by facsimile, addressed as follows:

If to Lessor:

Alan Thomas
Ring Power Corporation
9901 Ringhaver Drive
Orlando, Florida 32824

If to County:

County Manager
Lake County Administration Bldg.
Post Office Box 7800
Tavares, Florida 32778-7800

Each party hereto may change its mailing address by giving to the other party hereto, by hand delivery, United States registered or certified mail notice of election to change such address.

16. **Scope of Agreement.** This Agreement is intended by the parties hereto to be the final expression of their Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made.

17. **Waiver.** The failure of any party hereto at any time to enforce any of the provisions of this Agreement will in no way constitute or be construed as a waiver of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Agreement.

18. **Severability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

Agreement between Lake County and Ring Power for Wheel Loaders; RFP 08-0819

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: County, through its Board of County Commissioners, signing by and through its Chairman on the 20 day of January, 2008 and by Lessor through its duly authorized representative.

Lessor:

Name: ALAN THOMAS

Title: VP/ GOVERNMENTAL SALES DIR.

COUNTY

ATTEST:

Neil Kelly, Clerk
of the Board of County
Commissioners of Lake
County, Florida

LAKE COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

Welton G. Cadwell
Chairman

This 21st day of January, 2008

Approved as to form and legality:

Sanford A. Minkoff
County Attorney

EXHIBIT A: EQUIPMENT AND PAYMENT SCHEDULE

Equipment: Four (4) Caterpillar 950H Wheel Loaders (additional specification attached in this Exhibit)

Delivery Date: No later than 90 days from full execution of this Agreement

Payment Terms: \$2553.06/per unit/per month. Payment shall be made 30 days in arrears.

Total*: \$91,910.16/unit x four (4) units = \$367,640.64

*Total includes full warranty and full maintenance on all units for the term of the Lease

Requirements:

Public Works Wheel Loader

General: The four-wheel drive wheel loaders shall be new, unused current production articulated frame, z bar loader linkage type model.

Please mark if
required
specifications are met
by checking the
appropriate line.

Engine:

Yes x No

- Diesel powered, six cylinder, four cycle, turbo charged, direct injection, liquid cooled with a minimum net SAE rating of 180 horsepower
- Permanent anti-freeze and corrosion protection
- Engine hour meter
- Vertical exhaust with rain cap or curved exhaust pipe
- Dry type air cleaner with primary and secondary elements, and service (restriction) indicator
- Reversible or blower (ejector) fan
- Fuel capacity of 58 gallons (minimum)

Engine manufacturer	Caterpillar
Engine horsepower	196 HP
RPM's	1800

Transmission:

Yes ☒ No ☐

- Power shift transmission with torque converter
- Four (4) forward and three (3) reverse speeds (minimum)
- Top speed of machine 21 MPH (minimum)
- Speed and direction changes should be able to be made on the go, without machine hesitation

Drivetrain:

Yes ☒ No ☐

- Inboard planetary final drives to each wheel
- Torque proportioning differentials in both axles
- Lock/unlock differential (no-spin) in at least one axle, (torque proportioning axles alone do not meet this specification)
- Four wheel drive

Loader:

Yes ☒ No ☐

- Fenders front and rear (rear fenders not required if deck serves the same purpose as fenders)
- Center point frame articulation
- Spread hitch shall have double tapered roller bearings at pivot points
- Oscillating rear axle, minimum 26 degrees total
- Transmission side frame guards
- Drawbar/hitch with pin
- Articulation locking bar/strut
- Lockable doors
- Vandalism protection
- Maximum height 11'2"
- Wheelbase 10'5" (minimum)

Hydraulics/Steering:

Yes ☒ No ☐

- Automatic bucket return to dig/lower control
- Automatic boom height
- Fully hydraulic steering with 40-degree full articulation steering angle both left and right of center and shall perform independent of engine speed variations

Brakes:

Yes ☒ No ☐

- Fully enclosed and sealed 4 wheel wet disc type

Bucket:

Yes ☒ No ☐

- Loader shall be equipped with a manual quick coupler to allow for easy bucket changes.
General purpose bucket (4.25 yard minimum) with bolt-on cutting edge
- Loader shall also be equipped with a multipurpose (4 way) bucket (2.75 yard minimum and 3 yard maximum) with bolt-on cutting edge
- Loader shall be equipped with hydraulic capabilities (third hydraulic function) to operate multipurpose (4 way) bucket
- Hydraulic hoses feeding multipurpose bucket shall have quick disconnects to allow for easy bucket changes
- Loader shall be equipped with counterweight if required due to quick coupler and multipurpose bucket

Performance:

Yes ☒ No ☐

- The machine shall have an operating weight enough to allow it to be capable of safely handling the 4.25 yard (minimum general purpose bucket in this specification, when it is fully loaded with material having a density of 3400 pounds per cubic yard)
- Breakout force 32,000 pounds (minimum)
- Static tip load (full turn) 23,000 pounds (minimum)
- Dump clearance 9 feet (minimum)

Tires/Wheels:

Yes ☒ No ☐

- Loader shall have four 23.5-25 12 ply (L-2) Sure Grip loader tires mounted on construction equipment type (multi-piece) wheels

Cab:

Yes ☒ No ☐

- Fully enclosed ROPS (Rollover Protection System) cab, sound suppressed with tinted safety glass, air conditioning, heater and defroster
- Adjustable suspension seat with seat belt
- Adjustable steering wheel
- One inside and two outside rear-view mirrors
- Front and rear windshield wipers/washers
- Floor Mat
- 12-volt power receptacle in cab to provide for radio/cell phone

Electrical:

Yes ☒ No ☐

- 24 volt electrical system with dual batteries and 50 amp (minimum) alternator
- Standard instrumentation and interior lighting
- Engine electronic monitoring/warning system
- Two front head lights

-
- Rear stop and taillights
 - Front and rear turn signals with hazard flasher
 - Front and rear work lights
 - Horn
 - Back up alarm
 - Battery master disconnect switch

Miscellaneous:

Yes x No

- Standard factory color